

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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MICHAEL W. CHIU :  
Plaintiff, :  
 :  
v. : **Memorandum Decision**  
 : **3:02cv2081(GLG)**  
 :  
JOHN AU., et al, :  
Defendants. :  
 :  
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The *pro se* plaintiff, Michael W. Chiu, filed a complaint [Doc. 2] alleging negligence, slander, defamation and assault against several defendants. The plaintiff asserts diversity and federal question jurisdiction as his basis for this Court's subject matter jurisdiction. See 28 U.S.C. §§ 1331, 1332. Upon review of the complaint, however, we, *sua sponte*, find that we lack federal subject matter jurisdiction over the matter.

Because subject matter jurisdiction remains "an unwaivable *sine qua non* for the exercise of federal judicial power," *Herrick Co., Inc. v. SCS Communications, Inc.*, 251 F.3d 315, 321 (2d Cir. 2001), it is this Court's obligation to address, *sua sponte*, this threshold question when it appears from the complaint that it is lacking. See *Jacobs v. Patent Enforcement Fund, Inc.*, 230 F.3d 565, 567 (2d Cir. 2000). Further, the district courts are to construe the pleadings of *pro se* parties liberally. See *Weixel v. Bd. of Educ. of N.Y.*, 287

F.3d 138, 145, 146 (2d Cir. 2002).

The plaintiff asserts diversity jurisdiction under section 1332(a)(2),<sup>1</sup> which provides in relevant part: The district courts shall have original jurisdiction of all civil actions . . . between citizens of a State and citizens or subjects of a foreign state." Section 1332 requires complete diversity. *Nachbaur v. Weiss*, 19 Fed. Appx. 24, 26 (2d Cir. 2001). In other words, no plaintiff and no defendant can be citizens of the same State." *Id.*; see *Kroger*, 437 U.S. 365, 373 (noting that "[o]ver the years Congress has repeatedly re-enacted or amended that statute conferring diversity jurisdiction, leaving intact this rule of complete diversity"). The requirements for diversity must be met for each defendant, or the entire case must be dismissed. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 (1989); *Cf. Herrick*, 251 F.3d 315, 329 (2d Cir. 2001) (noting several exceptions, not present here, to general rule that requirements of diversity must be met when complaint is filed).

Here, the plaintiff asserts claims against six defendants: Mr. Au, whom the plaintiff claims is "[a] resident of New York, United States, Canada, and China, and a citizen of the United States, Canada and China;" Union Carbide Inc. of Danbury, Connecticut; Union Carbide Ltd. of Canada; Praxair Company Ltd. of Tonawanda, New York; Praxair

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<sup>1</sup>The Court assumes that the plaintiff asserts 1332(a)(2) as its jurisdictional basis because no other subsection applies.

Canada Inc. of Canada; and Praxair China of China. The plaintiff is a citizen of Canada.

Based on the plaintiff's allegations of each defendant's citizenship, it is patently obvious from the complaint that at least two of the defendants are citizens of Canada. Moreover, absent facts sufficient to establish Mr. Au's domicile, he also might be a citizen of Canada. *See Linardos v. Fortuna*, 157 F.3d 945, 948 (2d Cir. 1998) (noting citizenship depends on domicile). Because complete diversity does not exist, this Court has no subject matter jurisdiction under section 1332(a)(2).

Further, the plaintiff claims federal question jurisdiction under section 1331 by way of a 42 U.S.C. 1983 civil rights claim. Section 1331 provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." A valid claim under section 1983 requires that a "defendant acted under color of state law; and (2) as a result of the defendant's actions, the plaintiff suffered a denial of her federal statutory rights, or her constitutional rights or privileges." *Annis v. County of Westchester*, 136 F.3d 239, 245 (2d Cir. 1998). There is nothing in the complaint to suggest that any of the defendants were acting under color of state law or that their alleged actions denied the plaintiff of any rights whatsoever. Therefore, federal question jurisdiction does not exist here.

The plaintiff also attempts to invoke 28 U.S.C. §§ 1343(a)(3) and (4) and 2201. Section 1343(a)(3) is not applicable here because it requires a party to act "under color of any law." *Girard v. 94th St. & Fifth Ave. Corp.*, 530 F.2d 66, 73 n.4 (2d Cir. 1976). Likewise, section 1343(a)(4) is not a proper basis for subject matter jurisdiction because 42 U.S.C. § 1983, upon which the plaintiff bases his civil rights claim, does not give him a civil cause of action because the defendants' conduct is not covered by the language of the statute and, therefore, cannot be said to be "authorized by law." See 28 U.S.C. § 1343(a), 42 U.S.C. § 1983; *McGinnis v. Ingram Equipment Co.*, 918 F.2d 1491, 1499 n.2 (11th Cir. 1990) (stating, as with section 1983 claims, section 1343(a)(4) does not confer federal subject matter jurisdiction if language of section 1981 does not extend to defendants' conduct). Moreover, because the plaintiff has failed to demonstrate an independent basis for federal subject matter jurisdiction, this Court lacks the authority to grant any declaratory judgment sought by Mr. Chiu against any of the defendants. See 28 U.S.C. § 2201.

Consequently, there exists no independent basis for establishing this Court's subject matter jurisdiction over this matter. Accordingly, the complaint **[Doc. 2]** is **DISMISSED**.

The Clerk is directed to enter judgment accordingly.  
**SO ORDERED.**

Dated: March 28, 2003  
Waterbury, CT

\_\_\_\_\_/s/\_\_\_\_\_  
Gerard L. Goettel  
United States District Judge